



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTON
ATTORNEY GENERAL**

June 22, 1990

Honorable Lloyd Criss
Chairman
House Labor & Employment
Relations
P.O. Box 2910
Austin, Texas 78768-2910

LO-90-36

Dear Representative Criss:

You ask three questions regarding videotapes of "forced cell transfers" made by the Texas Department of Criminal Justice.

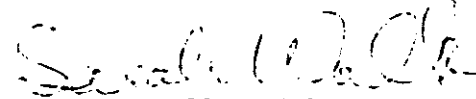
You first ask whether videotapes are still considered public records within the meaning of the Open Records Act, V.T.C.S. art. 5262-17a, as indicated by Open Records Decision No. 364 (1983). The answer is yes. As explained in Open Records Decision No. 364, the form in which information is stored does not determine its availability under the Open Records Act.

Your second question concerns the application of the exceptions to public disclosure found in section 3(a) of the Open Records Act to videotapes of forced cell transfers. Your question is answered in Open Records Decision No. 560 (1990), a copy of which is enclosed.


Your third question involves the application of section 14(a) of the Open Records Act to videotapes of forced cell transfers. As noted in Open Records Decision No. 560, we are of the opinion that questions regarding the availability of these records are within the sole jurisdiction of the federal court in the exercise of its jurisdiction in this ongoing litigation. However, as a general matter, release of a record pursuant to a grand jury subpoena would not constitute a voluntary release of the record within the meaning of section 14(a). Further dissemination of the record by the grand jury would be beyond the governmental body's control. Moreover, it is important to remember that section 14(a) does not permit the voluntary release by a governmental body of information that is confidential by law. It merely makes clear that permissive exceptions to

public disclosure may be waived, and that, if such an exception is waived, the information must be released to any member of the public.

Very truly yours,



Sarah Woelk, Chief
Letter Opinion Section



Rick Gilpin, Chairman
Opinion Committee

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APPROVED: OPINION COMMITTEE

SW/RG/JS/le

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